IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16856 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATHALAL SHANKARLAL PATEL

Versus

HEIRS AND LEGAL REPRESENTATIVES OF ISHWARLAL KALIDAS PATEL

Appearance:

1. Special Civil Application No. 16856 of 2003

MR BD KARIA for Petitioner No. 1

MR MAHENDRA K PATEL for Respondent No. 1/1 to 1/4

MR KM PARIKH for Respondent No. 2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 23/02/2004

ORAL JUDGEMENT

Heard the learned Advocates.

Leave to delete respondents Nos. 3, 4 and 5.

Rule returnable today. Mr. Mahendra Patel and Mr. K.M Parikh waive service of rule for respondents Nos. 1/1 to 1/4 and respondent No.2 respectively.

The petitioner claims that in the partition of the family properties, the lands Survey No. 417/1 and 417/2 (Block No. 704) admeasuring 3 Hectares 55 Are 56 Sq.Mtrs. situated at village Tatosan, Tal. Vijapur, Dist. Mehsana had come to the share of the petitioner. Revenue proceedings in respect of the said lands are pending before the State Government. However, the respondent No.1, along with other lands, mortgaged the aforesaid land Block No. 704, to the respondent No.2 Bank of Baroda and borrowed certain loan. The Bank of Baroda has instituted Special Civil Suit No.2 of 2003 in the Court of learned Civil Judge (Senior Division), Vijapur, for recovery of a sum of Rs. 2,02,046/- by sale of the lands mortgaged to it, including the aforesaid land Survey No. 417/1 and 417/2 (Block No.704). The petitioner, therefore, filed Application Exhibit 8 for being joined as party defendant in the aforesaid Special Civil Suit No.2 of 2003. By order daed 12th November, 2003, the learned Civil Judge has held that the petitioner has no right, title or interest over the aforesaid land Block No. 704, nor he was in possession of the said land. The Application Exhibit 8 has accordingly been rejected. Feeling aggrieved, the petitioner has preferred the present petition.

The learned Advocate Mr. Karia has relied upon documents at Annexures "A" to "F". He has submitted that the claim of ownership of the petitioner is pending before the Revenue Authority. Pending the said proceedings the learned Judge could not have decided the said issue by impugned order dated 12th November, 2003. Since the plaintiff Bank has sought recovery of the amount by sale of the lands including the aforesaid land Block No. 704, if the suit were decreeed, the petitioner's interest would be adversely affected. The petitioner is, therefore, a necessary party to the suit for recovery instituted by the Bank.

The respondents have contested the petition. It is submitted that all the lands mortgaged to the Bank belong to the respondents Nos. 1/1 to 1/4. The present petitioner has no right, title or interest in the said lands. Neither the petitioner is a necessary party, nor a proper party.

Indisputably the petitioner's claim for ownership of the said land Block No. 704 is pending before the Revenue Authorities. He cannot be non-suited at this stage.

On the facts and in the circumstances of the case, the petition is allowed. The impugned order dated 12th November, 2003 made below Application Exhibit 8 in Special Civil Suit No. 2 of 2003 pending before the learned Civil Judge (Senior Division), Vijapur, is quashed and set aside. The Application Exhibit 8 is allowed. The petitioner be impleaded as party defendant in the aforesaid Special Civil Suit No. 2 of 2003. The petitioner shall file his pleadings as early as possible, but not later than six weeks from today. The petitioner shall also co-operate in the early hearing and decision of the Suit.

Rule is made absolute. The parties shall bear their own costs. The Registry shall send the writ forthwith.

(Ms. R.M. Doshit, J.)

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